

### **REMARKS**

Applicant thanks the Examiner for the thorough examination provided the present application.

Claims 1-7 remain pending in the application, and claims 1, 6 and 7 are independent. Claims 1-5 have been amended according to the Examiner's suggestions. Support for the amount of distilled water or purified water recited in amended claim 2 can be found in General Example of the specification. Further, the symbol recited in claim 2 "~" is changed to "-" to clarify the claimed language. Furthermore, new claims 6 and 7 are supported by claim 2. Thus, no new matter is added by the present submission.

Reconsideration of the application in view of the above amendments and remarks as set forth below is respectfully requested.

#### **Claim Rejections Under 35 U.S.C. § 112, Second Paragraph**

Claims 1-5 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

In particular, the Examiner indicates that there are numerous instances throughout the claims in which misspelled and/or unclear terms are recited. In response, Applicant has amended the claims in accordance with the Examiner's suggestions. Additionally, claim 2 has been amended to replace the term "saururus extract" with "*Houttuynia cordata* extract" and to replace the verbiage "an adequate quantity of distilled water or purified water" with "5.0 - 30.0 weight parts of distilled water or purified water". Further, the phrases "1-carbon" and "and or other essence oil" have been removed from claim 5.

Therefore, Applicant now believes that the rejections under 35 U.S.C. § 112, second paragraph, have been rendered moot. Withdrawal of the rejections is respectfully requested.

### **Claim Rejection Under 35 U.S.C. § 103(a)**

Claims 1-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dodd et al. (U.S. Patent No. 6,344,218, hereinafter "Dodd") in view of Li et al. (U.S. Patent No. 6,174,521, hereinafter "Li"), Choi et al. (KR 2003-0043302, hereinafter "Choi"), Aoki et al. (JP 2000-079158, hereinafter "Aoki"), Sakiguchi (JP 2002-080335) and Betts (U.S. Patent No. 5,525,331).

This rejection is respectfully traversed.

### **The Present Invention and its Advantages**

Claim 1 of the present invention is directed to a composition for improving sweat osmidrosis comprising ethanol, polyol, salicylic acid, triclosan, allantoin, a licorice acid or its di-alkali metallic salt, dl-camphor, *Houttuynia cordata* extract, green tea extract, and aloe extract as main ingredients and water and perfume essence as auxiliary ingredients.

By applying the claimed composition, sweat osmidrosis can be prevented to 50% - 100% as compared to odor status prior to the application. See Table 5 of the present specification.

### **Distinctions over the Cited Art**

Dodd relates to an aqueous composition for sanitizing hands comprising an odor controlling agent and a sanitizing agent. Thus, a sanitizing agent such as an antimicrobial agent must exist in the composition. However, as admitted by the Examiner, Dodd fails to disclose or suggest the claimed salicylic acid, triclosan, allantoin, a licorice acid or its di-alkali metallic salt, dl-camphor, *Houttuynia cordata* extract, green tea extract, and aloe extract. Further, Dodd's composition is used for sanitizing hands, rather than improving sweat osmidrosis, especially apocrine sweat gland osmidrosis. Therefore, the claimed composition is patenably distinct from the Dodd reference in terms of composition and intended use.

The deficiencies of the Dodd reference cannot be remedied by the secondary references including Li, Choi, Aoki, Sakiguchi and Betts since the secondary references still fail to disclose or suggest the claimed invention.

Also, the primary reference Dodd cannot be combined with other secondary references. With regard to this, MPEP 2141.02 indicates that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention (*W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)).

Under this guideline, Li relates to a gel deodorant comprising a deodorant, gallant, polymeric and non-polymeric alcohol, glycerin and water. Topical deodorants of Li have been formulated in a variety of forms and are intended for topical application to human skin to mask or prevent malodors associated with human perspiration. The gel deodorant composition of Li topically applies to the skin in any known or otherwise effective method for controlling malodor associated with perspiration. Thus, Li's composition has nothing to do with sanitizing or washing hands. Therefore, a combination of Dodd and Li cannot be obtained.

Further, Aoki relates to a deodorant drink comprising a fruit juice of Japanese persimmon, etc. See abstract and Experimental Example 2 of Aoki. Therefore, the liquid drink of Aoki cannot be combined with the gel composition of Dodd or Li for applying to the skin area.

Therefore, the claimed invention cannot be expected from a combination of the cited art.

Lastly, Applicant respectfully submits that the Examiner has improperly employed hindsight reconstruction. The only basis for combining the cited references is that of hindsight reconstruction of Applicant's invention based solely on Applicants' disclosure. That is, the only basis to pick and choose the various features from each of the cited references is found nowhere but in Applicant's disclosure.

In connection with this, the Court of Appeals for the Federal Circuit has stated that to imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art

reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher. ... One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention. In re Fine, 5 USPQ2d 1596 (Fed. Cir. 1988) (quoting W.L. Gore Associates Inc. v. Garlock, Inc., 220 USPQ 303 (Fed. Cir. 1983)), Accord Grain Processing Corp. v. American Maize Prod. Co., 5 USPQ2d 1788 (Fed. Cir. 1988) ("care must be taken to avoid hindsight reconstruction by using the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit"); Panduit Corp. v. Dennison Mfg. Co., 1 USPQ2d 1593 (Fed. Cir. 1987), cert. denied, 481 U.S. 1052 (1987); Orthopedic Equipment Co. v. United States, 217 USPQ 193 (Fed. Cir. 1983).

Also, each of the cited references fails to show constructional composition's similarity and the requisite disclosure to modify specific composition. Thus, there is no teaching, suggestion or motivation (TSM) or other articulated rationale provided to one of ordinary skill to change the cited composition in a manner necessary to arrive at the claimed composition. In connection with this, Takeda Chemical Industries Ltd. v. Alphapharm Pty. Ltd., 83 USPQ2d 1169 (Fed. Cir. 2007) stated that a *prima facie* case of obviousness for a claimed chemical compound requires a showing of structural similarity between the prior art compound and the claimed compound, as well as a showing that the prior art would have suggested making specific molecular changes necessary to achieve the claimed invention, and the prior art taught away from selecting a particular lead compound.

Moreover, the claimed invention is not obvious even under a KSR standard (a thorough analysis under *Graham v. John Deere* properly controls the obviousness inquiry, instead of using TSM test). Specifically, the claimed invention is distinguishable from the cited art in terms of 1) scope and content of the cited art, 2) different constructional composition based on 3) those of skill in the art as explained above.

For the reasons set forth above, the claimed invention is not obvious over the cited art. Therefore, reconsideration and withdrawal of the rejection are respectfully requested.

**CONCLUSION**

In view of the above remarks, Applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact James T. Eller, Jr., Reg. No. 39,538, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: June 29, 2009

Respectfully submitted,

By 

James T. Eller, Jr.

Registration No.: 39,538

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant